

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

CHRISTOPHER G. MAVRONIKOLAS,
Appellant,

v.

UNITED STATES POSTAL SERVICE,
Agency.

DOCKET NUMBER
PH07528810269

DATE: JAN 25 1989

Christopher G. Mavronikolas, Haddonfield, New Jersey,
pro se.

Louise M. McCartney, Bellmawr, New Jersey, for the
agency.

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman

OPINION AND ORDER

The appellant petitions for review of an initial decision dated June 21, 1988, that dismissed with prejudice his appeal from the agency's action removing him from his position. For the reasons discussed below, the petition for review is DENIED. The Board REOPENS this case on its own motion under 5 C.F.R. § 1201.117 and FORWARDS the case to

the Philadelphia Regional Office for adjudication of the appellant's appeal of the August 12, 1988, removal action.¹

BACKGROUND

The appellant appealed to the Board's Philadelphia Regional Office from the agency's action in removing him for disability from his position of Clerk, effective February 13, 1988. Following a pre-hearing conference, during which the agency was ordered to provide evidence that it had given the appellant notice of his appeal rights under 5 U.S.C. § 7513, the agency cancelled the removal action. See Initial Appeal File (IAF), Tab 6. In an initial decision dated June 21, 1988, the administrative judge found that the agency's rescission of the separation action mooted the case before the Board and he dismissed the appellant's petition for appeal with prejudice.

In his petition for review, the appellant claims that the agency did not follow required procedures in effecting his removal and that it failed to provide accurate leave and financial information in regard to his pay, retirement, and workers' compensation benefits. He also stated that the agency initiated a new removal action, and on August 1, 1988, he submitted a copy of an agency letter dated July 29, 1988, removing him effective August 12, 1988. See Petition For Review (PFR) File, Tab 4. He argues that the agency's refusal to discuss his case is a reprisal for

¹ The appellant should notify the Philadelphia Regional Office as to whether or not he requests a hearing on that appeal.

previously filed unresolved grievances, Board appeals, discrimination complaints, and Equal Employment Opportunity Commission appeals. He states that he seeks enforcement of an earlier Board decision in *Mavronikolas v. United States Postal Service*, MSPB Docket No. PH07528410388 (Sep. 6, 1984),² and review of his petition for review and "enforcement" of the initial decision in this case.

The agency's response argues that its July 29, 1988, decision is a separate action not relevant to the instant appeal, that the initial decision correctly interpreted law and regulation, and that the allegations regarding improper workers' compensation benefits are matters beyond the Board's jurisdiction.

² In that case, the appellant alleged that the agency had reduced him to a lower grade because of national origin discrimination and reprisal. In his initial decision dated September 6, 1984, the administrative judge reversed the agency's action because of harmful procedural error. He found that in taking the action the agency failed to provide the appellant with appeal rights under 5 U.S.C. § 7513(b). The administrative judge noted that his initial decision did not address the merits of the agency's action or the appellant's allegation of discrimination. The initial decision in that case became the final decision of the Board on October 11, 1984, when no petition for review was filed. See IAF, Tab 1. Therefore, his request to reopen the 1984 decision is untimely, and he has not shown good cause for the untimely filing. See *Alonzo v. Department of the Air Force*, 4 M.S.P.R. 180, 184 (1980) (the Board may determine that a waiver of a regulatory time limit is appropriate where a party shows good cause for the untimely filing).

ANALYSIS

The Board's jurisdiction is determined by the nature of the action at the time the appellant filed his appeal. See *Wilson v. Small Business Administration*, 27 M.S.P.R. 561, 563 (1985). An agency's cancellation of an appealed adverse action divests the Board of its jurisdiction. See *id.* The cancellation constitutes a complete rescission only if the appellant is returned to the status quo ante. See *id.* Moreover, an agency is not precluded from renewing an adverse action based on charges brought in an earlier proceeding where the adverse action in that proceeding was invalidated on procedural grounds. See *Steele v. General Services Administration*, 6 M.S.P.R. 368, 372 (1981).

Applying these principles to the present case, the record shows that the agency's cancellation of its February 13, 1988, removal action on June 6, 1988, returned the appellant to the status quo ante. See IAF, Tab 4 (1) and (2), and Tab 6. Therefore, the administrative judge properly dismissed the appeal with prejudice.

Moreover, his contention that the agency gave erroneous information to the Office of Workers' Compensation Programs does not constitute noncompliance with a Board decision, nor does it constitute a matter that is otherwise appealable to the Board. See 5 C.F.R. § 1201.3(a). "

Because the February 13, 1988, removal action was rescinded, the appellant's argument that the agency was

required to follow certain procedural requirements under its regulations in taking the action is irrelevant. However, the appellant may reassert his argument during the Board's adjudication of the August 12, 1988, removal action, as discussed below.

New Petition for Appeal

Although the August 12, 1988, removal action had not been effected and the appellant's appeal was therefore premature when he first raised the issue and asked the Board to consider it, the action has since been effected and an appeal is now timely. Therefore, acceptance of that appeal for adjudication is appropriate. See *Wilson*, 27 M.S.P.R. at 564 (although an appeal of a reduction in force was premature when submitted, because the action had not yet been effected, the appeal was timely when the action was effected and it need not be dismissed only to be refiled later).

ORDER

Accordingly, we find that the appellant's petition for review of the initial decision issued on June 21, 1988, does not meet the criteria for review set forth at 5 C.F.R. § 1201.115. This is the Board's final order in that appeal. The initial decision in that appeal is now final. 5 C.F.R. § 1201.113(b). The file in this case is hereby forwarded to the Philadelphia Regional Office for adjudication of the appeal from the agency's August 12, 1988, removal action.

NOTICE TO APPELLANT


You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal in MSPB Docket No. PH07528810269 if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Washington, D.C.


Robert E. Taylor
Clerk of the Board